



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA) Criminal No. 1:14-cr-276 MAD
)
)
) **Indictment**
)
v.) Violations: 18 U.S.C. § 1349 [Conspiracy]
)
) 18 U.S.C. § 1341 [Mail Fraud]
JOHN W. CALTABIANO, Jr. and)
COLLEEN J. McCARTEN) 42 U.S.C. § 408(a)(3)
) [Social Security Fraud]
) 18 U.S.C. § 1001(a)(2)
) [False Statements]
) 18 U.S.C. § 641 [Theft of
) Government Property]
) U.S. DISTRICT COURT
) N.D. OF N.Y.
) FILED
) JUL 17 2014
Defendants.) 11 Counts and Forfeiture Allegation
) County of Offense: Rensselaer
) ALBANY
) ROBERT M. BAERMAN, CLERK
) ALBANY

THE GRAND JURY CHARGES:

1. On or about June 22, 2006, the State of New York Workers' Compensation Board ("WCB") issued a notice to defendant **JOHN W. CALTABIANO, Jr.** awarding him \$400 weekly Workers' Compensation benefits, to be paid by Travelers Property & Casualty Indemnity Company of America ("Travelers"), and retroactive benefits for the period from January 6, 2006, through June 22, 2006. From on or about June 22, 2006, through in or about July 2008, **CALTABIANO** received Workers' Compensation benefits payments.

2. On or about August 29, 2006, the United States Social Security Administration ("SSA") issued a notice to **CALTABIANO** awarding him \$717 monthly Social Security Disability benefits. From on or about August 29, 2006, through in or about October 2010, **CALTABIANO** received monthly Social Security Disability benefits payments.

COUNT 1
[Conspiracy to Commit Mail Fraud]

3. Paragraphs 1 and 2 are hereby realleged and incorporated by reference as if fully set forth herein.

4. From in or about April 2008, through in or about October 2010, in Broome, Hudson, Greene, and Rensselaer Counties in the Northern District of New York, defendants **JOHN W. CALTABIANO, Jr.** and **COLLEEN J. McCARTEN** conspired to commit mail fraud by devising and intending to devise a scheme and artifice to defraud Travelers and the Social Security Administration by submitting false and fraudulent information to Travelers, the New York State Workers' Compensation Board (the "WCB"), and SSA, and for obtaining money and property by means of materially false and fraudulent pretenses, representations, promises, and material omissions and for the purpose of executing such scheme and artifice and attempting to do so, knowingly placed, caused to be placed, and took and received in a post office and authorized depository for mail certain matters, documents, letters, and mailings to be sent and delivered by the United States Postal Service, in violation of Title 18, United States Code, Section 1341.

Purpose

5. The purpose of the conspiracy was to obtain money from Travelers, the WCB, and SSA by submitting false statements about **CALTABIANO'S** ability to see, and by concealing that **CALTABIANO** could see well enough to drive.

Manner and Means

6. **CALTABIANO** and **McCARTEN** made numerous material misrepresentations and material omissions designed to mislead Travelers, WCB, and SSA regarding **CALTABIANO'S** ability to see including his ability to move around without assistance and drive an automobile.

7. As a result of the material misrepresentations and material omissions by **CALTABIANO** and **McCARTEN**, Travelers and SSA paid **CALTABIANO** workers' compensation and Social Security disability benefits.

8. As part of the conspiracy, **CALTABIANO** and **McCARTEN** used the United States Mail to submit documents to the Social Security Administration and the New York State Office of Temporary Disability Assistance, Division of Disability Determinations. **CALTABIANO** and **McCARTEN** also received payments delivered by the United States Postal Service.

9. The use of the mails was foreseeable, and **CALTABIANO** and **McCARTEN** were aware that use of the mails would follow in the ordinary course of business.

Overt Acts in Furtherance of the Conspiracy

10. In furtherance of the conspiracy and to effect the object thereof, the defendants committed the following overt acts, among others, in the Northern District of New York:

11. On or about April 8, 2008, **CALTABIANO** and **McCARTEN** met with an ophthalmologist hired by Travelers as an independent medical examiner. **McCARTEN** led **CALTABIANO** into the room as if **CALTABIANO** was blind and could not move without assistance when, as both **CALTABIANO** and **McCARTEN** then well knew, **CALTABIANO** regularly moved about without assistance, and even drove himself and others. **CALTABIANO**

falsely reported to the doctor that he lived in total darkness and, in order to make it impossible for the doctor to conduct the examination, falsely reported that he could not tolerate any light whatsoever in his right eye.

12. On or about July 16, 2008, McCARTEN drove CALTABIANO to a WCB hearing in Hudson, New York. McCARTEN helped CALTABIANO out of the car, guided him by his arm into the hearing room, and directed him where to sit, all as if CALTABIANO was blind and could not move without assistance when, as both CALTABIANO and McCARTEN then well knew, CALTABIANO regularly moved without assistance, and even drove himself and others.

13. On or about July 19, 2009, CALTABIANO and McCARTEN completed and submitted to SSA a Continuing Disability Review Report (SSA Form 454-BK) which falsely stated that CALTABIANO “can’t see family drives & transports him everywhere when goes” when, as both CALTABIANO and McCARTEN then well knew, CALTABIANO regularly drove himself and others.

14. On or about September 1, 2009, CALTABIANO and McCARTEN completed a New York State Office of Temporary Disability Assistance, Division of Disability Determinations, a Function Report (“Function Report”). CALTABIANO and McCARTEN provided the following false answers to questions within the Function Report::

- i. “No” in response to the question: “Do you drive?”
- ii. “Everything from driving, to playing ball and working” in response to the question: “What were you able to do before your illnesses, injuries or conditions that you cannot do now?”

- iii. "No" in response to the question: "When you go out, can you go alone?"
- iv. "Family drives him to where he has to go" in response to the question: "Explain how your illnesses, injuries, or conditions affect your abilit[ies] – Other;" and
- v. Only "Walk with family" and "Ride in a car" in response to the question: "When you go out, how do you travel?"

when, as both **CALTABIANO** and **McCARTEN** then well knew, **CALTABIANO** regularly drove himself and others.

15. **CALTABIANO** and **McCARTEN** mailed the false September 1, 2009, Function Report to the New York State Office of Temporary and Disability Assistance, Division of Disability Determinations, in Binghamton, New York.

All in violation of Title 18, United States Code, Section 1349.

COUNTS 2 THROUGH 6
[Mail Fraud]

16. Paragraphs 1 through 15 are hereby realleged and incorporated by reference as if fully set forth herein.

17. From in or about April 2008, through in or about October 2010, in the Northern District of New York, defendants **JOHN W. CALTABIANO, Jr.** and **COLLEEN J. McCARTEN** devised and intended to devise a scheme and artifice to defraud the Social Security Administration by submitting false and fraudulent information to SSA, and to obtain money and property by means of material false and fraudulent pretenses, representations, promises, and material omissions and attempting to do so.

18. For the purpose of executing such scheme and to obtain money and property by means of material false and fraudulent pretenses, representations, promises, and material omissions and attempting to do so, defendants **CALTABIANO** and **McCARTEN**, in the Northern District of New York, on or about the following dates knowingly placed, caused to be placed, and took and received in a post office and authorized depository for mail certain matters, documents, letters, and mailings to be sent or delivered by the United States Postal Service the following matters and things to and from the addresses listed below:

Count	Date	Matter or Thing	Address
2	09/01/2009	Function Report	<u>Delivered to:</u> NYS Office of Temporary and Disability Assistance Division of Disability Determinations Binghamton, NY
3	05/03/2010	Social Security Disability Payment	<u>Delivered to:</u> Colleen McCarten for John W. Caltabiano, Jr. Catskill, NY
4	08/30/2010	Social Security Disability Payment	<u>Delivered to:</u> Colleen McCarten for John W. Caltabiano, Jr. East Greenbush, NY
5	09/28/2010	Social Security Disability Payment	<u>Delivered to:</u> Colleen McCarten for John W. Caltabiano, Jr. East Greenbush, NY
6	10/29/2010	Social Security Disability Payment	<u>Delivered to:</u> Colleen McCarten for John W. Caltabiano, Jr. East Greenbush, NY

All in violation of Title 18, United States Code, Section 1341.

COUNT 7
[False Statement for Use in Determining Disability Insurance Benefits]

19. On or about July 19, 2009, in Columbia County in the Northern District of New York, defendants **COLLEEN J. McCARTEN** and **JOHN W. CALTABIANO, Jr.** made and caused to be made a false statement and representation of a material fact for use by SSA in determining rights to Social Security Disability Insurance Benefits payment, in that she completed a Continuing Disability Review Report (SSA Form 454-BK), as directed by

CALTABIANO, stating that **CALTABIANO** "can't see family drives & transports him everywhere when goes," when, as **McCARTEN** and **CALTABIANO** then well knew, this was false because **CALTABIANO** regularly drove himself and others, in violation of Title 42, United States Code, Section 408(a)(3).

COUNT 8
[False Statement]

20. On or about July 19, 2009, in Columbia County in the Northern District of New York, defendant **COLLEEN J. McCARTEN**, in a matter within the jurisdiction of the executive branch of the United States, that is the SSA, knowingly and willfully made materially false, fictitious, and fraudulent statements and representations, that is she completed a Continuing Disability Review Report (SSA Form 454-BK), as directed by **CALTABIANO**, stating that **CALTABIANO** "can't see family drives & transports him everywhere when goes," when, as **McCARTEN** then well knew, **CALTABIANO** regularly drove himself and others.

21. At or around that time and place, defendant **JOHN W. CALTABIANO, Jr.** willfully caused the commission of the above offense, in violation of Title 18, United States Code, Section 1001(a)(2) and Title 18, United States Code, Section 2(b).

COUNT 9
[False Statement for Use in Determining Disability Insurance Benefits]

22. On or about September 1, 2009, in Broome County in the Northern District of New York, defendants **COLLEEN J. McCARTEN** and **JOHN W. CALTABIANO, Jr.** made and caused to be made false statements and representations of material facts for use by SSA in determining rights to Social Security Disability Insurance Benefits payment, in that **McCARTEN** completed a New York State Office of Temporary Disability Assistance, Division of Disability Determinations Function Report, as directed by **CALTABIANO**, stating:

- a. "No" in response to the question: "Do you drive?"
- b. "Everything from driving, to playing ball and working" in response to the question: "What were you able to do before your illnesses, injuries or conditions that you cannot do now?"
- c. "No" in response to the question: "When you go out, can you go alone?"
- d. "Family drives him to where he has to go" in response to the question: "Explain how your illnesses, injuries, or conditions affect your ability[ies] – Other;" and
- e. Only "Walk with family" and "Ride in a car" in response to the question: "When you go out, how do you travel?"

when, as **McCARTEN** and **CALTABIANO** then well knew, this was false because **CALTABIANO** regularly drove himself and others, in violation of Title 42, United States Code, Section 408(a)(3).

COUNT 10
[False Statement]

23. On or about September 1, 2009, in Broome County in the Northern District of New York, defendant **COLLEEN J. McCARTEN**, in a matter within the jurisdiction of the executive branch of the United States, that is the SSA, knowingly and willfully made materially false, fictitious, and fraudulent statements and representations, that is she completed a New York State Office of Temporary Disability Assistance, Division of Disability Determinations Function Report as directed by **CALTABIANO** stating:

- a. "No" in response to the question: "Do you drive?"

- b. "Everything from driving, to playing ball and working" in response to the question: "What were you able to do before your illnesses, injuries or conditions that you cannot do now?"
- c. "No" in response to the question: "When you go out, can you go alone?"
- d. "Family drives him to where he has to go" in response to the question: "Explain how your illnesses, injuries, or conditions affect your ability[ies] – Other;" and
- e. Only "Walk with family" and "Ride in a car" in response to the question: "When you go out, how do you travel?"

when, as **McCARTEN** and **CALTABIANO** then well knew, **CALTABIANO** regularly drove himself and others.

24. At or around that time and place, defendant **JOHN W. CALTABIANO, Jr.** willfully caused the commission of the above offense, in violation of Title 18, United States Code, Section 1001(a)(2) and Title 18, United States Code, Section 2(b).

COUNT 11
[Theft of Government Property]

25. From on or about August 3, 2009, through on or about October 29, 2010, in Columbia County in the Northern District of New York, defendants **JOHN W. CALTABIANO, Jr.** and **COLLEEN J. McCARTEN** knowingly and willfully stole, purloined, and converted to defendant **JOHN W. CALTABIANO, Jr.**'s own use and the use of others, money of the United States, that is, Social Security benefits, in violation of Title 18, United States Code, Section 641 and Title 18, United States Code, Section 2(a). That violation exceeded the sum of \$1,000, that is \$14,193, in violation of Title 18, United States Code, Section 641.

FORFEITURE ALLEGATION

26. The allegations contained in Counts 1 through 6 and 11 of this Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

27. Pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), upon conviction of an offense in violation of Title 18, United States Code, Sections 641, 1341, and 1349, the defendants, **JOHN W. CALTABIANO, Jr.** and **COLLEEN J. McCARTEN**, shall forfeit to the United States of America any property, real or personal, which constitutes or is derived from proceeds traceable to said violations. The property to be forfeited includes, but is not limited to, the following:

A money judgment in the amount of \$36,484.

SUBSTITUTE ASSET PROVISION

28. If any of the property described above, as a result of any act or omission of the defendants:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty,

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of the defendants up to the value of the forfeitable property.

All pursuant to Title 18, United States Code, Sections 981, and Title 28, United States Code, Section 2461.

Dated: July 17, 2014

A TRUE BILL, Name redacted

Grand Jury Foreperson

RICHARD S. HARTUNIAN
United States Attorney

By:


Jeffrey C. Coffman
Assistant United States Attorney
Bar Roll No. 517969